IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICITON

INCOME TAX APPEAL NO.320 OF 2007

The Commissioner of Income Tax .. Appellant.

Versus

Ambejogai Sahakari Sakhar
Karkhana Limited .. Respondent.

Mr.B.M. Chatterjee with Mrs.P.P. Bhosale and Mr.P.S. Sahadevan for the appellants.

Mr.S.N. Inamdar with Mr.A.K. Jasani for the respondent.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 8TH OCTOBER, 2007.

P.C. :

1. Admit on the following questions of law.

1. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that, advances paid to Harvesting and Transporting Contractors was in the nature of business interest of the assessee society and thereby deleting the disallowance of interest part, even though such advance was not made in the normal course of business and was made without any specific contractual obligation and out of borrowings on which assessee is giving huge interest to the financial institutions. Thus, it was nothing but a diversion of borrowed funds for non-business purpose.

2. Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in following the decision in the case of CIT & Another Vs. Radico Khaitan Ltd., reported in (2005) 274 ITR 354 (All.), wherein the issue involved before the court was totally different with that of in the case of above assessee

society.

3. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing the grace period as per provisions of section 139(1) of the I.T. Act, 1961, in respect of payment of PF, whereas, the said payment is required to be made within 15 days as per the provisions of Provident Fund Act.

4. Whether on the facts and in the circumstances of the case and in law, the Tribunal ;was justified in holding that no portion of cane purchase price paid to members towards binding material by the co-operative society, can be disallowed as excess sugar cane price paid to the members of the society as additional benefit under the provisions of section 40(A)(2) of the I.T. Act, 1961.

2. Question No.1 pertains to advances to Harvesting and Transporting Contractors. This issue has been answered in favour of the assessee and against the Revenue by our Judgment dated 17th September, 2007 in Income Tax Appeal No.273 of 2007 (The Commissioner of Income-tax V/s. Samarth Sahakari Sakhar Karkhana Limited).

3. Question No.3 is answered in favour of the Revenue and against the assessee by our judgment dated 8th October, 2007 in Income Tax Appeal No.256 of 2004 and other appeals (The Commissioner of Income-tax V/s. Godavari (Mannar) Sahakari Sakhar Karkhana Limited).

4. Question No.4 pertains to cane purchase

price paid to Members. That issue has been answered in favour of the assessee and against revenue by our judgment dated 14th August, 2007 in Income Tax Appeal No.318 of 2007 (Commissioner of Income Tax V/s. Manjara Shetkari Sakahari Sakhar Karkhana Limited).

5. In the light of above, question No.2 as raised would not arise. In the light of that, questions Nos.1 and 4 are answered in the affirmative in favour of the assessee and against the revenue. Question No.3 is answered in the negative in favour of the revenue and against the assessee.

6. The Appeal disposed of accordingly.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)